CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA
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March 18, 2015

General Services Administration
Regulatory Secretariat (MVCB)
1800 F Street, N.W. 2nd Floor
Washington, D.C. 20405-0001
Attn: Hada Flowers

Re: Comment on the Senior Policy Operating Group to Combat Trafficking in Persons Draft Definition for "Recruitment Fees" (FAR Case 2013-001 – Ending Trafficking in Persons)

Dear Ms. Flowers:

On behalf of the U.S. Chamber of Commerce ("Chamber") we are pleased to submit comments at this early stage on the drafting of a definition for the term "recruitment fees" to supplement the new anti-trafficking regulations (FAR Case 2013-001) published on January 29, 2015, to implement E.O. 13627 and the End Trafficking In Government Act.

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region, with substantial membership in all 50 states. A significant portion of Chamber members are federal contractors and subcontractors. The Chamber also represents many state and local chambers of commerce and other associations who, in turn, represent many additional contractors and subcontractors. The new anti-trafficking regulations and the definition of "recruitment fees" will have a significant impact on our members.

I. The Period in Which to Submit Public Comments on the Definition of "Recruitment Fees" Should be Clearly Defined

At the outset, we must note that the Chamber has been very much involved with the issue of "recruitment fees" in various legislative and regulatory efforts, particularly in reference to legislation that was being considered in the House of Representatives in 2014. We believe that comments from the Chamber - and possibly other interested trade associations - will enable the FAR Council to develop a definition of "recruitment fees" which most accurately captures the current state of the law in this area, and also

incorporates the views of potentially impacted stakeholders. However, we are concerned that the indefinite comment period - which the Early Engagement Opportunity notice ambiguously states "*will close in early March 2015"* – will end before all interested stakeholders are provided an opportunity to comment. Nonetheless, we were pleased to learn through email communication in March with FAR Council staff that following the Early Engagement Opportunity there will be a full notice and comment rulemaking process, where groups and companies, such as the Chamber and its members, will have an opportunity to provide complete analysis and thoughtful input.

II. The Definition of "Recruitment Fees" Should be Consistent With Current U.S. Law and Business Practices

We have three concerns at the outset about the draft definition, and request that the draft definition be revised prior to publication for formal comment to address these concerns:

(1) Reasonable Fees

As written, the draft definition of "recruitment fees" eliminates the ability of any federal contractor, subcontractor or agent to charge fees to the employee that might relate to recruitment processing, even when those fees cover legitimate costs for the benefit of the recruited employee such as job placement in the United States. The Chamber is well aware of the issue of suspect recruiters who deceptively charge workers unreasonable recruitment fees. However, a blanket proscription on all fees, as the draft definition offers, would virtually eliminate a legitimate business practice that is driven by the marketplace: allowing individuals in the recruiting business to charge reasonable job placement fees to the individual who is being placed in a job.

(2) Consistency with U.S. Immigration Law

Moreover, the proposed draft definition requires that fees be paid by employers even when those fees are permitted by federal immigration law. Nothing in the Immigration and Nationality Act requires a sponsoring U.S. employer to pay for passport photos, the application fee for the individual worker's visa stamp, the individual's passport issued by his home country, or similar costs, for example. Likewise, Congress has looked at the question of transportation costs for foreign-born workers in the U.S. on visas and has specifically identified certain visa categories and circumstances where that is required but otherwise the Immigration and Nationality Act does not require employers to pay transportation costs. Unless specifically excluded from the definition, the proposed definitional language could be read to require employers to pay for all transportation fees to and from the U.S. for every foreign-born worker coming to the country, which is certainly not a requirement of the Immigration and Nationality Act.

(3) State Department Exchange Visitor Fees

It is standard practice for J-1 visa holders to pay a fee related to recruitment and placement for various J-1 exchange visitor programs, and the private entities that are designated to administer such programs for the State Department rely on such fees to run their programs. Modifying this system would decimate this program that many consider an integral part of our nation's public diplomacy efforts. The private sector has an ongoing commitment to cooperate with the Department of State to engage in public diplomacy efforts by creating and administering these exchange visitor programs, some of which authorize employment in the United States for specified purposes.

III. Conclusion

In our coalition comments regarding the regulations implementing the End Trafficking In Government Act, we focused on "unreasonable" fees in discussing recruitment fees. The underlying statue defines "unreasonable placement or recruitment fees," as "fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited." The final regulations ignore this suggestion as well as the authorizing text and instead adopt the formulation provided by the Executive Order, which prohibits *all* "recruitment fees." While we understand that this policy decision as set forth in the regulations is final, we do believe that a proper definition of "recruitment fees" can help to curb unsavory recruitment practices but at the same time remain consistent with U.S. law and common business practices. We ask that the proposed definition to be published for notice and comment rulemaking reflect the three concerns identified above.

We thank you for your consideration of these views.

Sincerely,

Amy M. Nice
Executive Director
Immigration Policy

James Plunkett
Director
Labor Law Policy